Pub. Conveyances
52 CR

1952. **File No.** 52 CR

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Legal Deptt
B BRANCH

Subject:— Rules under the Bombay Public Conveyances Act, 1920

P4/E

File No. Pub. Conveyances II/52(R)

Gen. 104 c.

613-B

Legal Department.

In place of the H.D. draft at page 9 ante, a revised draft notification is sent herewith.

Draft rule 1 in H.D. draft at page 9 ante. The draft rule provides that a driver's licence shall be endorsed in the name of the licensee's wife etc. Under section 11 every person who acts as driver of a public conveyance must obtain a separate licence. One and the same licence cannot be endorsed in the name of several persons. The draft rule is ultra vires and has been deleted.

Revised draft rules 2, 3 and 4. They correspond to Home Department draft rules 2, 3 and 4.

Revised draft rule 5. It corresponds to Home Department draft rule 5. The latter part of Home Department draft rule requires that the drivers of the hand cart shall render all assistance in unloading the cart. Such a duty cannot be cast on the driver unless the Act contains specific provision to that effect (Cf. section 73 of the Motor Vehicles Act, 1939) and authorises Government to make a rule to that effect. The Act does not contain any such specific provision and no such rule can be made under section 35: This protion from Home Department draft has therefore been deleted.

Revised draft rule 6. It corresponds to Home Department draft rule 6.

Deputy Secretary to Government.

U.R. to H.D. No. 12388., Dated the 26th July, 1952.

Legal Department.

Theproposal is to amend the Matheran Rickshaw Rules so as to make them applicable to pony-drawn rickshaws which are to be introduced in Matheran as an experimental measure.

2. The ~~esixting~~ existing rules were framed by the Commissioner Southern Division, before the Bombay Public Conveyances Act was amended by the Bombay Commissioners (Abolition of Office) Act, 1950 (Bom. XXVIII of 1950). The rules or notifications issued or made by the Commissioner of a Division have been saved under section 8 of the Bombay Commissioner (Abolition of Office) Act, 1950. But the notification issued by the Commissioner of Southern Division and proposed to be amended appears to be legally ineffective for the following reasons.

3. The notification bearing No. P.O.~~il~~. P.C.11 dated the 30th June 1935 has been shown to have issued by the Commissioner, Southern Division under section 36 of the Bombay Public Conveyances Act, 1920. It however appears to be a draft notification. No final notification appears to have been issued thereafter after receiving objections or suggestions. It cannot, therefore, be said that the powers of the Commissioner of Police, Bombay, can be validly performed by the District Superintendent of Police, Kolaba, in the absence of any valid final notification. The second notification bearing the same number and date appearing under the first notification, therefore, has got no legal validity, and it is no use amending a notification which is legally ineffective. Moreover, t'ere is nothing to show in the second notification that the same has been issued

~~has been issued~~ by the District Superintendent of ~~Pli~~ Police, Kolaba, as the signature of the Commissioner of Southern Division appears under the notification. The argument that the Commissioner, Southern Division, does not loose his right to issue a notification under section 36 will not stand in view of the specific provision of clause (a), sub-section (2) of section 36 of the Act whereunder it is necessary to specify under a notification by whom the function assigned by the Act to the Commissioner of Police should be performed.

4. Moreover, there is this further legal complication that section 35 of the Act provides that the Commissioner of Police (herein this case the District Superintendent of Police, Kolaba), subject to the condition of previous publication, may make rules not inconsistent with this Act. The subsidiary rules shown under notification II bearing No. B.O.1. P.C.11 dated the 30th June 1935 relate to the provisions of section 35 of the Act and should have been made after previous publication which prodedure does not appear to have been followed. Similarly section 18 of the Act provides that the Commissioner of Police (here in this case the District Superintendent of Police, Kolaba) shall, subject to the conditions of previous publication and the previous sanction of the State Government, fix the legal rates of fares for public conveyances. Under this section also the previous publication of the notification is statutorily required. This procedure has also not ~~ben~~ been followed while fixing the fares for rickshaws. In order to rectify this illegality it is necessary to re-issue the whole

~~to re-issue the whole~~ notification embodying therein the proposed amendments. The better plan would be divide the notification into three parts; the first should be issued with reference to the provisions of section 7(1) , 14(1) and 19. The second notification may be issued under section 18 and the third notification may be issued under sections 2(c), 6(2) and 35. (Please see in this connection the observations in para 2 of L.D., U.R., No. 16920, dated the 24th October 1951).

5. The proposal now in that Rickshaws in Matheran should be drawn by ponies in certain cases. Section 8 of the Bombay Public Conveyances Act, 1920, provides that no horse shall be used for drawing a public conveyance except by a licence granted by the Commissioner of Police in respect of such horse. In the proposed amendment no proposal is made to issue a licence in respect of the horse. It will be necessary to make such provision in the revised notification after the scale of fees in respect of such licence has been approved by Government.

6. The Home Department may, therefore, revise the proposed notification in view of what is stated above and submit a fresh draft for the scrutiny of the R.L.A.

Additional Deputy Secretary to Government.

U.R. to H.D., No. 18897/B, dated the 13th Nov. 1952.

SSM / 3/7/56.